Pennsylvania Compensation Rating Bureau *and* Iris E. Paige, Geraldine A. Mistie, and Diane M. Rickards. Case 4-CA-12218

March 7, 1983

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND ZIMMERMAN

On November 10, 1982, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In agreeing with the result reached herein, Chairman Miller finds it unnecessary to place any reliance on *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975), or its progeny.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This proceeding was heard by me in Philadelphia, Pennsylvania, on August 20, 1982, upon an original unfair labor practice charge filed on June 29, 1981, and a complaint issued on December 14, 1981, which as amended alleges that Respondent violated Section 8(a)(1) of the Act by discharging the Charging Parties because they engaged in the "protected concerted activity of writing comments on written warning notices issued to them on June 9, 1981." In its duly filed answer, Respondent denied that any unfair labor practices were committed. Following close of the hearing, briefs were filed on behalf of the General Counsel and Respondent.

Upon the entire record in this proceeding, including my direct observation of the witnesses while testifying and their demeanor, and consideration of the post-hearing briefs, it is hereby found as follows:

FINDINGS OF FACT

I. JURISDICTION

Respondent is an unincorporated, nonprofit association of insurance companies engaged in providing rating services for insurance companies at its Philadelphia, Pennsylvania, facility. In the course of said operations, Respondent, during the calendar year preceding issuance of the complaint, provided services exceeding $50,000 in value to customers located outside the Commonwealth of Pennsylvania.

The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

This case tests the validity under the National Labor Relations Act of the termination of Iris E. Paige, Geraldine A. Mistie, and Diane M. Rickards. All three were issued written disciplinary warnings on Tuesday, June 9, 1981.[1] The next day all three returned their warnings to supervision with personally inscribed notations reflecting their individual protest. That same afternoon, the employees were interviewed separately by their supervisor concerning the written protests, and toward the end of the workday on June 11, all three were terminated.

The General Counsel contends that the employees' response to the warnings furnished the cause for discharge which in turn was unlawful either because such activity was protected under Section 7 of the Act or because it was believed to be so by Respondent. Respondent on the other hand denies that it acted on any such grounds, arguing instead that "the weight of evidence . . . permits only the conclusion that these employees were discharged for violating Respondent's work rules restricting excessive talking during worktime and failing to heed proper disciplinary warnings for such conduct." Furthermore, and in the alternative, Respondent contends that the employee conduct involved was neither protected by the Act, nor believed to be such by any of its representatives.

More specifically, the facts show that Paige was hired in September 1976, that Mistie was first employed in May 1978, and that Rickards was hired in June 1978. At the time of their discharge, all three were employed in the Rating Department. Paige was classified as an experienced rating clerk, and Mistie and Rickards both held the position of stat review clerk. Their immediate supervisor was "Lucy" Wright, who, in turn, reported to the assistant director of the department, Edward Mar-

[1] Unless otherwise indicated all dates refer to 1981.

ynowitz. The overall department was manned by approximately 23 employees.

With respect to the warnings it appears that the three dischargees were assigned to adjacent desks, immediately outside the office of Wright and, hence, worked within her direct view. On June 9, 1981, the former were called in a group to Wright's office, where the written warnings were distributed.[2] The offense listed on that of Paige and Rickards simply stated "talking," while that given to Mistie recited "Personal Phone Calls, Talking." There was no further elaboration. Wright requested that the warnings be reviewed, signed, and returned with any comments the employees might choose to make. Wright also testified that she told all three that if they "continued talking and disturbing the work force" that she would put them on "probation."[3] Each warning included the following form language:

> The purpose of this notice is to call the above deficiency to your attention, and give you an opportunity to correct it. A copy of this notice will be placed in your personnel file and may be considered in future disciplinary actions.

Having received the warnings, Mistle upon returning to her desk immediately wrote a response on the warning notice. Paige and Rickards took their warnings to their respective homes, and that evening wrote their response also on the warning.

The inscription authored by Diane Rickards set forth as follows:

> (Today is June 9, not June 8, is there a reason for me getting it the day after it was typed?)
>
> I feel this . . . was totally unnecessary and absolutely ridiculous. You treat adults like they are in nursery school rather than work. You expect people to continuously work and never give themselves a break. It is impossible to work all the time. Everyone needs a rest. How can you expect us to do something that no one can? It seems to me that you should have more to occupy your time with than to spend it thinking up childish things like this to give to people. You should be more concerned with finding the best ways of getting the work completed. It shouldn't matter if people spend a few minutes talking to unwind if their work is getting done. You should be trying to work with us not against us. Our work is caught up, there is no backlog with the letters, so it is obviously [sic] that we can get our work done too.

That of Gerry Mistie recited as follows:

> In reply to this letter, I Gerry Mistie think it is very unfair. I do admit I used the phone during the time of my wedding. I had obligations to take care of. But I don't get all personal calls. I do get business calls. I think its unfair especially that I get pinpointed out as using the phone when there is [sic] five phones in here, not counting the supervisor's, and believe me they are *all* on the phone talking personal, believe me or not. I was told by my director that it was okay as long as it wasn't a long time on the phone, and until he told me that's what I was told. As far as my talking well, I'm sorry to say that is unfair too, everyone dos there [sic] share of talking and just because we get seen talking and they don't well that's just an excuse to me, for them to give us one of these childish paper. I admit I talk but believe me we *all* do our share. I do my work and that's what they should be concerned about. I know nobody ask me for my opinion but I feel I have to let you's [sic] know this is wrong to some and not all, I mean about getting this paper. I also feel if this is going in my records I want the truth to go in it.

That of Iris Paige stated:

> To whom it may concern,
>
> I would like to take the time to express my personal feeling on receiving a warning notice for talking. I feel this is totally unreasonable and unfair!
>
> 1. I don't feel that I have or ever been a constant disturbance to the office. Also, when first brought to my attention about such warning, I questioned my director as to what warnings were all about. I remember saying you are first warned verbally. No one gave me such warning. And it is my belief that others were warned verbally first.
>
> If warnings like this must be done, it is my opinion that it should be done in extreme cases only (one who constantly disrupts the office and who's [sic] work may be affected by this). I believe if my supervisor felt I was talking more than usual, a simple be quiet or hold it down would have been sufficient! Because I take my job seriously I don't feel that these warnings should be given for the sake of it or because a supervisor may be in a rotten mood or had a bad vacation or even if the girls in the office got a little out of hand that day. Therefore I truly feel that this warning notice should be scratched from my personnel record.
>
> Please note, this notice is dated 6/8/81 but was given on 6/9/81—is there a reason for that??

On June 10, upon specific request by Wright, the dischargees returned the warnings to the former. After examining the responses Wright met individually with each employee. She first called Iris Paige. She reminded Paige that she had been placed on warning for talking and that it had to stop. The latter argued that she was supposed to be verbally warned before receiving anything in writing, whereupon Wright indicated that she had done so.

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[2] See G.C. Exhs. 2, 3, and 4.

[3] With respect to her use of the term "probation," to a leading question, propounded by counsel for Respondent, Wright corrected herself and indicated that she at that time threatened to put them on additional "warning" if the problem persisted. In any event, this orally communicated threat of further discipline has not gone unnoticed in my assessment of Respondent's testimony and claim that all three were discharged solely because they were caught in a second offense on the morning of June 11.

Paige then called Wright a "liar." Paige also indicated that she considered the written warning "totally ridiculous," unfair, and stated that her daughter in kindergarten didn't bring home "such junk."[4]

Mistie was next to appear. As in the case of Paige, Mistie was informed by Wright that both the talking and her personal use of the telephone had to end. Mistie challenged, asserting that everyone else was guilty of the same offense. Wright explained that that might be so, but that she could hear and see Paige, Mistie, and Rickards, but not the others. Mistie also indicated that she did not think that criticism of her use of the telephone for personal reasons was fair in that she had received permission from Marynowitz to use the phone as long as she kept her conversation short. Wright indicated that she was aware of this, but this was before Mistie's wedding, an event that had since passed. When Wright reminded Mistie of her comment that the warning was "unfair and childish," Mistie reaffirmed her opinion in this respect, and accused Wright of singling out certain employees, when all others were guilty of the same offense.

In Rickards' interview, the latter reiterated her view that the warning was totally ridiculous. She went on to state that it had been shown to her husband, who signified his concurrence by rolling on the floor and laughing. Wright reminded that the Bureau had rules against talking and that warnings for such an offense were not to be taken lightly. To this, Rickards indicated that she felt the warning was "stupid."[5]

Following the individual interviews, Wright took the warnings to Ed Marynowitz, her superior. At this point, according to clear testimony by Wright, she was not concerned with the conduct to which the warnings were addressed, but solely to the nature of the responses and the attitude manifested thereby. Marynowitz read the warnings, and actuated also by the attitude reflected in the employee reaction, he thereupon elected to take the matter to Charles Suitch, Respondent's senior vice president. As to the cause of his intervention, Suitch himself explained that "at the end of June 10 . . . Mr. Marynowitz came to my office and voiced his concern over the attitude and reflection of the comments made to Lucy Wright in her individual interviews with these employees." In further clarification, Suitch explained as follows:

> As I stated, Mr. Marynowitz voiced concern to me about the attitude that was reflected in the individual interviews with the three employees and the comments that were made to her; comments of: "you're a liar"; "my husband rolled around the floor laughing." And, to us, those comments—we don't object to anybody making—disagreeing with any of our policies, as pointed out earlier, we employ an "open door policy." But those comments to Mr. Marynowitz, and after hearing his explanation of them, did present an attitude type situation that normally doesn't exist. If an employee is dissatisfied, they will normally go back and discuss it further with their supervisor or director.

However, after a meeting attended by Marynowitz, Wright, Suitch and Personnel Administrator Ossip, it was allegedly decided to take no further disciplinary action at that time.

Nonetheless, according to Respondent's witnesses, on Thursday, June 11, at approximately 3:30 p.m., the Charging Parties were summoned to a meeting with Marynowitz. At that time they were informed that as of 4 p.m. that day they would be terminated. According to the testimony of Paige, Mistie, and Rickards, the sole reason for the discharge communicated to them by Marynowitz was their having undermined supervision by the comments they wrote on the warnings. Marynowitz confirmed that undermining supervision was among the grounds for the terminations, and Supervisor Wright elaborated that the undermining of supervision was founded upon the reaction by the dischargees to their warnings.

Based upon the foregoing, I find that consistent with the allocation of proof responsibility set forth in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), affd. in part 662 F.2d 899 (1st Cir. 1981), the General Counsel has established *prima facie* that the protestations concerning the warnings were a motivating factor contributing to the ultimate discipline.[6] Hence, assuming that the employee conduct in that regard was protected by Section 7 of the Act, "the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct." 251 NLRB at 1089. Thus, the stage is set for the threshold question presented by Respondent's claim that the terminations were prompted exclusively by supervening misconduct on the part of the alleged discriminatees which took place on the morning of June 11.

In this latter regard testimony of Marynowitz reveals that he arrived for work at approximately 8:45 on the morning of June 11, and upon his approach to the department, "heard some laughing and talking." Continuing on, he observed Paige and Mistie standing at the desk of Rickards engaged in conversation. According to Marynowitz, when he was observed, the employees curtailed their discussion, with Paige and Mistie, returning to their nearby desks. He claims next to have checked the sign-in sheet, discovering that all three were on the clock at the time and had been since 8 a.m. He then went to Wright's office "to find out what was going on . . . ." However,

[4] Paige, like Rickards and Mistie, testified that Wright stated that there was nothing to worry about concerning the one warning and that it would be placed in files held by Marynowitz and would not go to personnel. Wright denied making any such statement. I considered Wright's testimony to be the more probable. In this respect I credit her testimony that, as reflected on the warnings themselves, she was informed that the warnings would be placed in each employee's personnel file.

[5] To the extent of a conflict between the testimony of Rickards, Mistie, and Paige, on the one hand, and Wright on the other, as to what transpired during the above sessions, I believed the testimony of Wright.

[6] Contrary to the assertions in Respondent's brief, the evidence outlined above reflects a sequence of events which tends strongly to warrant an inference favoring the General Counsel as to the cause for discharge. Absent a showing on the part of the defense that motivation was founded upon other considerations the record would support an inescapable conclusion; i.e., that employee reaction to the warnings represented the sole foundation for the discharges. Cf. *Behring International, Inc.* v. *N.L.R.B.*, 675 F.2d 83, 87 (3d Cir. 1982.)

when he found Wright, she indicated that she was just coming out, having heard the talking, but had not done so earlier because she was on the telephone. According to Marynowitz this was the extent of his conversation with Wright.

Wright attempted to corroborate Marynowitz. She explained that in the morning, she has many phone calls from employees who either call in sick or to report lateness, etc. She claims to have been on the phone when the three were gathered at Rickards' desk that morning and talking. She states that she "couldn't get off the phone at that time to say anything to them," but failed to offer as to what was so important about the telephone conversation that took priority over correcting the laughter and talking, which as described by Marynowitz and Wright created a disturbance in the overall work area. Furthermore, although Wright indicates that she talked to Marynowitz for a few minutes at the time, exactly what was said in their conversation does not appear in her testimony. It is the sense of her account that any disruption to the workflow occasioned by the alleged misconduct on that occasion would have been for no more than "a few seconds." Though admittedly it was her primary responsibility to abort such incidents, she never approached the girls concerning it, or inquired as to what they were discussing, why they were laughing, or why they were not at their work stations during working hours. As shall be seen below, the whole incident as recapitulated by Respondent's witness struck me as entirely improbable.

According to Marynowitz, upon leaving Wright, he returned to his office "gathered up the warning slips again and decided I would go talk to Mr. Suitch, and tell him that I think the problem is continuing." Marynowitz at no time on June 11 specifically discussed or even referred to the alleged incident of that morning in any confrontation with the employees. In any event, at the meeting with Suitch, the latter decided to terminate the three employees. Marynowitz next met with the three employees, in the presence of Wright at 3:30 p.m. He claims to have told them that they were discharged because of "violation of work rules; underminding [sic] the authority of the supervisor; and disrupting the workflow."

This testimony that Marynowitz referred to a "disruption of the workflow" was uncorroborated. In addition, it is unclear, as to how Marynowitz, considering his limited discussion with Wright and taking account of the fact that he did not speak directly to either of the three employees, would have known whether they were caught up in their work, behind, or whether such disruption occurred. Indeed, his observation was limited to a few seconds. His explanation that he assumed that they were disrupting the workflow because they were supposed to be working and others were working did not persuade. Wright's account fails to reveal any reference to workflow disruption. According to her, the three *were informed* that they were being terminated "because of breaking the work rules; because of underminding [sic] the supervisor." Wright testified that she was aware of what Marynowitz meant by "underminding [sic] the supervision," explaining, quite clearly, that this was in reference to the attitude manifested by the employees in protesting their warnings. Her testimony cannot be reconciled with the representation in Respondent's brief that Marynowitz told the employees "that the reason for their discharge was their continued violations of work rules in the face of written warnings which misconduct undermined the supervisor's authority."

Marynowitz was corroborated a bit more closely by Suitch, who testified that it was his decision to terminate the three employees. He testified that on the morning of June 11, Marynowitz came to him, reporting the misconduct he observed that morning. Suitch claims that he inquired of Marynowitz as to whether he was concerned with "the behavior, the attitude, and whether or not he could see fit to continue with the employees." According to Suitch, Marynowitz responded that the incident was disobedient to the supervisor's warning, was disruptive, and reflective on other working people, and, hence, Marynowitz indicated "he did not see how we could continue to employ these people."[7]

In the face of my ultimate disposition herein, determination of the issue of causation is unnecessary. Nonetheless, I am convinced that the severe measure adopted by Respondent in treating with the Charging Parties was critically, if not entirely, based on their protestations concerning the warnings. In this respect, mistrust of Respondent's witnesses runs so deep as to raise the possibility that the incident of June 11 might have been a wholly contrived and trumped up pretext. Particularly incredible was the testimony afforded by Marynowitz. His view that the employees would have been terminated even if they had accepted the warnings without incident pertained to decisive question. Yet it collided with testimony by Wright that, at the terminal interview, his stated reason for the discharge included a reference to the dischargees' upbraiding of Wright for having issued the warnings. In my opinion it was more than just coincidence that Wright's testimony in this respect was at least partially parallel to the analysis attributed to Personnel Director Ossip by Paige, Mistie, and Rickards. Mistie and Rickards indicated that Ossip told them that their discharges were predicated upon comments each placed on the warnings.[8] My suspicion does not end with this highly material conflict in Respondent's own evidence. For the latter would have me believe that the several discharges were motivated *solely* because the dischargees had been caught talking *twice*. Suitch and Mar-

[7] Marynowitz testified that his recommendation at the time to Suitch was "that these employees either be put on probation or be terminated." Moreover, Suitch confirmed that the sole reason that Marynowitz approached him on June 10 was because of his concern for the attitude manifested by the inscriptions placed on the warnings by the employees, and their verbal comments to Wright in the individual interviews. As he conceded, the talking violations for which the warnings were issued attempted to deal with a problem which was not unusual in the operation, and hence would not alone have warranted intervention by the senior vice president.

[8] Paige testified that Ossip indicated that she did not know why they were fired, but went on to relate that she too would "be out on her ears" if she had made a statement to her boss like that made to Wright. This version mitigates but does not squarely refute the accounts of Mistie and Rickards. Ossip was not called and the foregoing was left to stand uncontradicted. I find that Ossip at a minimum referred to the employee protests while discussing the reasons for the termination with the Charging Parties.

ynowitz could not possibly have known more. Indeed, their specific knowledge would have been confined to Marynowitz' observations concerning the alleged incident of June 11, a matter, which, as shall have been seen, was hardly the subject of thorough investigation. Insofar as this record discloses, neither inquired as to the circumstances prompting Wright's issuance of the June 9 warnings. Indeed after the June 10 meeting, Wright, the primary source of information as to misconduct underlying the warnings, was allowed no input in connection with the discipline which followed. To effect discharges on the basis of a known, second offense without further inquiry as to the aggravated or nonaggravated nature of the original offense is particularly suspect when one considers the admission by Suitch that talking during work hours was not an unusual phenomenon in Respondent's operation.[9] While doubt exists as to whether the three women participated in a further breach of Respondent's work rules on the morning of June 11, even giving Respondent the benefit of the doubt in that respect, it is in any event my conclusion, consistent with the *Wright Line* test, that the General Counsel has made out a *prima facie* case that employee reaction to the warnings was at least an object of the decision to terminate and that Respondent failed by credible proof to meet its burden of demonstrating that said discipline would have inured had these employees not engaged in such conduct.

The question remains as to whether such conduct was protected by Section 7 of the Act. I find that this was not the case. Here, as in *Continental Manufacturing Corp.*, 155 NLRB 255 (1965), the employees *separately* decided and acted individually in placing the comments upon their warnings and in later addressing their supervisor verbally as to their own personal feelings. The evidence makes clear that the feelings and attitudes they communicated were personally held. They did not emerge from consultation with fellow employees or from discussion between themselves. Clearly lacking was the "concerted" quality that would be evident in the case of individual grievances founded upon terms of a collective-bargaining agreement[10] or where an individual invokes governmental remedies established by legislators for the protection of all workers.[11] Nowhere is it suggested that the action of the dischargees herein was intended to lay the ground work for future employee activity or enjoyed support of any other employees. Nonetheless, the General Counsel contends that, inasmuch as the conduct of the dischargees would necessarily redound to the benefit of coworkers, it should be deemed protected by Section 7 of the Act. This argument proves too much, for it is difficult to conceive of any employment gripe which lacks the potential, some day, under some circumstances, to be beneficial to some other employee. Indeed, no authority is cited and independent research fails to reveal that individual action might be converted to protected activity solely on that basis.[12] More is required.[13] Consistent therewith, the Board has stated that "Any indirect relationship to . . . rights of other employees . . . is too remote to turn a personal protestation into a concerted protest." *National Wax Company*, 251 NLRB 1064 (1980). Although the outer limit of the guarantees conferred by Section 7 is often difficult to isolate, this case, at best from the General Counsel's point of view, presents merely an illusion of concert. For the common elements were not the work of the employees, but rather were inspired by the Employer's course of action. In each instance, they were traceable directly to the fact that warnings were issued at the same time, for the same basic offense, and that dischargees did not like them and individually decided to say so. Beyond that not a shred of evidence has been presented to show interaction by the employee with respect to the means or content of the response. Instead, the latter assumed the form of individual protest, under conditions failing to reflect need for, desire, or bent toward "mutual aid or protection." In

[9] The Charging Parties denied involvement in the talking incident on the morning of June 11. Aspects of the account of Wright and Marynowitz tended to confirm their credibility in this respect. The first question relates to why Marynowitz, if he were seriously concerned with the infraction, failed to confront the employees or their supervisor to ascertain whether the employees were caught up in their work, or whether there was any justification for their apparent misbehavior or how this apparent offense related to the misconduct for which they had been formally cited. It is clear that despite his acknowledged deliberations between a recommendation of "probation" or "discharge," Marynowitz, for unexplained reasons, spurned any investigation as to mitigating circumstances, on the one hand, or the aggravated nature of any misconduct, on the other. Wright, according to Respondent's own testimony, also behaved curiously in that connection. Her testimony indicated that she remained on the telephone, while the employees who, the day before, had castigated her for unfairness in issuing warnings, engaged in a further infraction seemingly of the same type. Yet not only did Wright, on her own account, consider it more important to continue a telephone conversation, without interruption than to confront the offenders, but she admittedly failed to address the problem for the balance of the workshift. Her seeming indifference or at least passive stance in this regard is difficult to reconcile with her June 9 warning of additional discipline to the dischargees in the event of further transgressions, and the fact that this new alleged misconduct, having been discovered by Wright's superior, would have reflected adversely upon herself, in terms of her ability to police the worker area and employees for whom she was immediately responsible.

[10] *Interboro Contractors, Inc.*, 157 NLRB 1295 (1966), enfd. 388 F.2d 495 (2d Cir. 1967).

[11] *Alleluia Cushion Co.*, 221 NLRB 999 (1975).

[12] *Liberty Men's Formals, Inc.*, 258 NLRB 1303 (1982); *Jim Causley Pontiac, Division Jim Causley, Inc.*, 253 NLRB 695 (1980), as well as *Diagnostic Center Hospital*, 228 NLRB 1215 (1977), lend no support to the General Counsel's view in this respect. In each, the benefit to other employees was mentioned in the context of other, plainly concerted activity. Thus, *Liberty Men's Formal, Inc.*, and *Jim Causley Pontiac* both involved activity by a dischargee before a local government agency charged with administering protective labor legislation. In *Diagnostic Center Hospital*, the dischargee wrote a letter to management protesting salary levels, an act deemed protected even though the employee did not inform others of her intention to write the letter. However, because this step was a by-product of prior discussions with fellow employees evidencing their concern and shared interest in the subject matter of the letter, it was concluded that the former was acting concertedly on their behalf. As indicated, here there was no evidence of discussion between the dischargees. And while the inscriptions each placed on her warning reflected a shared point of view, this was a fortuity rather than inspired by any planned initiative. See also *Hitchiner Manufacturing Co., Inc.*, 238 NLRB 1253 (1978).

[13] Thus, a written complaint to management which accused a supervisor of unfair treatment did not alone constitute protected activity. *Tabernacle Community Hospital*, 233 NLRB 1425, 1427 (1977). Furthermore, in *Super Market Service Corp.*, 227 NLRB 1919, 1926-29 (1977), a letter which referred to a management representative's bad treatment of "everyone who's worked with him" was deemed an unprotected expression of a "personal gripe." Indeed, even an individual's request for a wage increase has been deemed unprotected. See *Meurer, Serafini and Meurer, Inc.*, 224 NLRB 1373, 1377 (1976).

sum, it is concluded that the employee activity which is the focal point of this complaint amounted to individual carping, beyond the protected ambit of Section 7 of the Act.

Even accepting the above view, remaining for consideration is the General Counsel's alternative contention that Respondent effected the terminations upon a "mistaken belief" that the dischargees were engaged in protected activity.[14] This view lacks merit. It does not appear that Respondent harbored any particular hostility toward concerted, as distinguished from what it viewed as intemperate, individual action on the part of its employees. And I am convinced herein that Respondent's sensitivity towards conduct of the Charging Parties was out of concern for the attitude they manifested, as individuals, toward a supervisor. The factual foundation for arguments to the contrary supports no other conclusion and at best is ambiguous. Thus, accepting that Respondent might well have been in a position to conclude, had it given the matter any thought, that the employee protestations were sufficiently related to have been "concertedly planned," this hardly establishes that it acted upon such a belief in effecting the discharges. Just as vague is the observation by the General Counsel that Respondent failed to differentiate as between the dischargees in discussing their conduct and the possible discipline. For, there was no need for these deliberations to be any more specific. Each of the Charging Parties expressed here individual protest with language, argument, and tone that was taken fairly by management as harsh and disrespectful to a supervisor as well as her authority. Accordingly, this was a common denominator characteristic of the conduct of each of the Charging Parties and it furnished a proper reference for management to draw upon in addressing the problem. The evidence simply furnishes no reasonable basis for inferring that Respondent acted on a belief that the alleged discriminatees had engaged in activity of a protested nature.[15]

In sum, it is concluded that the General Counsel has failed to establish by a preponderance of the evidence that the June 11 terminations of Paige, Mistie, and Rickards were to any extent prompted by considerations protected by Section 7 of the Act. Accordingly, the complaint alleging that their discharge violated Section 8(a)(1) of the Act shall be dismissed in its entirety.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent did not violate Section 8(a)(1) of the Act by on June 1, 1981, terminating its employees Paige, Mistie, and Rickards.

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in this proceeding and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

It is hereby ordered that the complaint herein be, and hereby is, dismissed in its entirety.

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[14] Respondent contends that this contention ought to be stricken, since not specifically alleged in the complaint. The complaint alleges that Paige, Mistie, and Rickards were discharged in violation of Sec. 8(a)(1) because they "engaged in the protected concerted activity of writing comments in warning notices issued to said employees on or about June 9, 1981." Whether or not raised by the General Counsel, or first mentioned by me, it is plain that analysis of the facts from the standpoint of "mistaken belief" entails neither variance in motive, nor distinct cause of action, but and in my opinion represents a theory which naturally arises from the extant allegation. Respondent knew or should have known that it would be called upon to defend this and any other theory of unlawfulness that might be countenanced by the specific claim of proscribed motive set forth in the complaint.

[15] Compare *Mashkin Freight Lines, Inc.*, 261 NLRB 1473, 1476 (1982), *et seq.*, where the concerted participation in a sickout was the employer's *stated* reason for the termination of three truckdrivers. To the same effect see *Northern Telecom, Inc.*, 233 NLRB 1374, 1378, 1380 (1977); and *Henning & Cheadle, Inc.*, 212 NLRB 776 (1974).

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.